UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BERNARD TURNER and JANE TURNER,	)	
Plaintiffs	)	
v.	)	*Civil No. 89-0137 P*
THE HARTFORD,	)	
Defendant	)	

RECOMMENDED DECISION ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This diversity suit arises out of injuries sustained by the plaintiff[1] in an accident resulting from the malfunction of the automatic transmission in his car. The defendant is the insurance carrier for the used auto parts dealer which allegedly sold the defective transmission causing the plaintiff's injuries. The defendant has filed a motion for summary judgment asserting that the insurance policy does not provide coverage for the plaintiff's injuries because the plaintiff's predecessor in interest was not insured under the contract.

[1] The named plaintiffs are Bernard Turner and Jane Turner. Jane Turner, however, has conceded that the damages she sustained are not covered by the insurance policy at issue in this suit. *See* Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment at 12. Accordingly, I will address only Bernard Turner's claims.

The court shall render summary judgment if there remains ``no genuine issue as to any material fact" and if ``the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The material facts, viewed in the light most favorable to the plaintiff, *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881, 895 (1st Cir. 1988), may be summarized as follows: Cumberland Salvage, Inc. (``Cumberland Salvage") is a family-run business[2] specializing in the sale of salvaged and used auto parts from a location on the Blackstrap Road in Cumberland, Maine. Deposition of Keith A. Libby, Sr. at 15-17; Diagram Sheet (part of Exh. 5R to Affidavit of Jeffrey Rosenblatt attached to Plaintiff's Statement of Facts as Exh. 5). Gray Meadows Garage (``Gray Meadows"), a used-truck and four-wheel drive vehicle dealership which at the time in issue also sold used parts, is a division of Cumberland Salvage and is located on Route 100 in Gray, Maine. *Id.* at 16-19; Deposition of Elvin H. Copp at 10-11. The actual operations of these businesses are closely connected; often the employees and inventory are exchanged between these locations. Deposition of Keith A. Libby, Sr. at 15; Deposition of Elvin H. Copp at 6-8, 11.

[2] Cumberland Salvage is actually a wholly-owned subsidiary of Copp Motors, Inc. the stockholders of which are Gerald Copp, Ronald Copp and Elvin Copp. Deposition of Keith A. Libby, Sr. at 15-16, 26-27.

On December 15, 1978 Elvin Copp, president of Cumberland Salvage and manager of the Gray Meadows operation, submitted an application through the McIntire-Megquire insurance agency to the assigned risk pool in New York for garage owners insurance. Deposition of Elvin H. Copp at 6, 10; Deposition of Keith A. Libby, Sr. at 27; Deposition of Liane S. Peppin at 8-10 and Exh. 2 thereto. Gray Meadows required the garage policy in order to receive a used car dealer license from the State of Maine. Deposition of Elvin H. Copp at 12-13. The application, which was completed by Rodney Megquire as producer,[3] listed the insured as ``Elvin Copp d/b/a Gray Meadows Garage, Route 100, Gray, . . . Maine," and was signed by Elvin Copp. *Id.* at 19; Exh. 2 to Deposition of Liane S. Peppin. It was assigned by the pool to the defendant. Deposition of Liane S. Peppin at 15. The defendant required additional information from Gray Meadows before it would issue a policy and therefore sent to Mr. Megquire its own form of application for garage insurance. *Id.* at 15-16. The second application, which listed the applicant and address of its main location as ``Elvin Copp D/B/A Gray Meadows Garage Rt 100 Gray Maine," was completed by Mr. Megquire, signed by Elvin Copp and delivered to the defendant. *Id.* at 16; Deposition of Elvin H. Copp at 19; Exh. D-18 to Deposition of Keith A. Libby, Sr. Together these applications indicated that the applicant was a non-franchised used car dealer operating with ten vehicle dealer plates at a single location on Route 100 in Gray,[4] was required by state regulation to secure such insurance, and had one regular operator employee, two

[3] Rodney Megquire was not an agent of the defendant. Deposition of Liane S. Peppin at 9-12.

[4] The defendant's form of application called for the applicant to list *all* locations where it conducted garage operations. Exh. D-18 to Deposition of Keith A. Libby, Sr.

clerical employees and five other employees. Exh. 2 to Deposition of Liane S. Peppin; Exh. D-18 to Deposition of Keith A. Libby, Sr.

The defendant subsequently issued a garage policy to ``Elvin Copp dba Gray Meadows Garage, Rte 100, Gray, ME 04039." Exh. D-1 to Deposition of Keith A. Libby, Sr. Annual policies were in effect during calendar years 1979, 1980 and 1981. Deposition of Liane S. Peppin at 20. At the end of each annual policy period the defendant performed an audit to determine the actual premium for coverage during that period. *Id.* at 18-20. Premiums were calculated by multiplying a determined rate by the number of the insured's employees. *Id.* at 19, 22-23.

On January 21, 1981 Randy's Used Auto Parts (``Randy's") bought a used 350 Chevrolet transmission from Cumberland Salvage at its Blackstrap Road location. Deposition of Keith A. Libby, Sr. at 32-35 and Exh. D-13 thereto. The sale was evidenced by a Cumberland Salvage printed sales slip. Exh. D-13 to Deposition of Keith A. Libby, Sr. A later billing statement submitted to Randy's, listing the transmission and several other items, contained the names of both Cumberland Salvage and Gray Meadows and requested that all payments be made to Gray Meadows. Exh. D-14 to Deposition of Keith A. Libby, Sr. Subsequently, Paul Cantin Chevrolet installed the used transmission in the plaintiff's car. Affidavit of Bernard Turner & 2 (Exh. 1 to Plaintiff's Statement of Facts). The day following the installation the plaintiff's car spontaneously shifted into reverse as he stepped out of it pinning him underneath the door and dragging him for some distance. *Id.* && 3-4.

The plaintiff filed an action in the Maine Superior Court which in time grew to include Cumberland Salvage as a fourth-party defendant. *See* Exh. 1 to Affidavit of Jerrol A. Crouter (attached to Defendant's Memorandum in Support of Motion for Summary Judgment). As part of a settlement agreement between the plaintiff and Cumberland Salvage, Cumberland Salvage assigned to the plaintiff all its rights against the defendant and allowed judgment to be entered against it. Exh. D-15 to

Deposition of Keith A. Libby, Sr. The plaintiff subsequently filed this reach and apply action to enforce the judgment he received against Cumberland Salvage in the Maine Superior Court.

The defendant argues that the garage policy does not cover the sale of the defective transmission because it was made from the Cumberland Salvage location and the insurance policy only covers sales from the Gray Meadows location.[5] The plaintiff asserts two points: (1) the sale was effectively made by Gray Meadows and the insurance policy therefore covers the plaintiff's injuries; and (2) even if the sale was made by Cumberland Salvage at its Blackstrap Road location the policy should be reformed because Gray Meadows and Cumberland Salvage are a single operating unit and the defendant was or should have been aware that the garage policy was intended to cover both locations.

It is undisputed that the garage policy covers the Gray Meadows location. *See* Defendant's Reply Memorandum in Support of Motion for Summary Judgment at 3. The plaintiff asserts that, because Randy's was directed to make payment for the defective transmission to Gray Meadows, the sale of the part was made by that entity and the damages arising from that sale are therefore covered. The defendant contends that the actual sale of the article occurred at the Cumberland Salvage Blackstrap Road location and cannot be ascribed to Gray Meadows merely through the use of a unified billing statement.

[5] The defendant argues in the alternative that if the court determines that the insurance policy does cover this sale the plaintiff's recovery should be limited to the amount specified in the policy. Because I find that the policy does not cover the Cumberland Salvage location I do not reach this issue.

The plaintiff's argument that Gray Meadows actually sold the transmission is not supported by the record. Undisputed evidence in the record clearly establishes that the sale of the transmission took place at the Cumberland Salvage Blackstrap Road location. The sale was originally billed on a Cumberland Salvage invoice and there is no evidence that the transmission was taken from any place other than the Cumberland Salvage inventory.[6] The subsequent unified billing statement does not change the nature of the original transaction, but only reflects that these two entities are, in some fashion, connected. Accordingly, I conclude that Gray Meadows did not effectively sell this transmission and that the plaintiff may not base his claim for recovery from the defendant on this theory.

The plaintiff's second argument is that the policy should be reformed to reflect a mutual mistake on the part of the parties to the contract. He asserts that Gray Meadows intended to cover both the Cumberland Salvage and Gray Meadows locations and that the defendant knew or should have known that the insured intended such coverage through its yearly audits of the business. The defendant contends that there was no mistake as to the terms of the policy and that the scope of its coverage is clear from the writing.

The terms of an insurance contract are ``to be determined by the same principles of law as are applicable to other contracts." *Palmer v. Mutual Life Ins. Co. of New York*, 324 F. Supp. 254, 256-57 (D. Me. 1971). Thus, the court must examine the whole instrument to ascertain the intention of the parties. *Peerless Ins. Co. v. Brennon*, 564 A.2d 383, 385 (Me. 1989). Unambiguous language is to be

[6] Indeed, an initial charge of an item purchased from the Gray Meadows location would have been reflected on an invoice bearing only Gray Meadows' name at the top. Deposition of Keith A. Libby, Sr. at 35.

interpreted according to its plain and commonly accepted meaning. *Id.* at 384. However, a contract is not legally binding if the parties enter into it under an actual and good faith mutual misconception of the facts respecting the bargain. *Miller v. Lentine*, 495 A.2d 1229, 1231 (Me. 1985); *Interstate Indus. Uniform Rental Serv., Inc. v. Couri Pontiac, Inc.*, 355 A.2d 913, 918 (Me. 1976). By the same token, ``a mistaken assumption about the subject matter of the bargain by one party and ignorance of that mistake by the other party is not a mutual mistake, but two unilateral mistakes." *Interstate Indus. Uniform Rental Serv., Inc.*, 355 A.2d at 918.

The plaintiff has the burden of proving at trial that the defendant and Gray Meadows were mutually mistaken as to the location or locations covered by the insurance policy. The showing made by the defendant in support of its motion for summary judgment is more than sufficient to shift to the plaintiff the obligation ``to go beyond the pleadings and by [his] own affidavits, or by the `depositions, answers to interrogatories, and admissions on file,' designate `specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quoting Fed. R. Civ. P. 56(c)). This the plaintiff has failed to do. Nothing in the evidence suggests that at the time both parties entered into the insurance contract they held ``a conception of the facts that differs from reality," let alone a mutual misconception. *Miller*, 495 A.2d at 1231. The applications and the garage policy contract between the defendant and Gray Meadows are straightforward -- only the Gray Meadows location is listed. Here there is no evidence that the defendant had any conception of the facts which differed from those on the policy or applications. On the contrary, the evidence suggests that Elvin Copp or Cumberland Salvage mistakenly assumed that both the Blackstrap Road location and Gray Meadows' Route 100 location were insured and that the defendant was ignorant of that mistake. *See Interstate Indus. Uniform Rental Serv., Inc.*, 355 A.2d at 918. Where the mistake is that of the insured alone, reformation will not be granted. *See Couch on Insurance 2d* (Rev. ed.) ' 66:30.

Accordingly, I conclude that there was no mutual mistake by the parties to the contract and the policy may not be reformed on this basis.

The plaintiff also argues that ``the mistake need not be mutual if the insured's unilateral mistake is coupled with negligent or inequitable conduct of the insurer." Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment at 5. He asserts that the defendant's yearly audits of Gray Meadows to determine the final premium for the previous year's policy should have alerted it to the fact that both locations were intended to be insured and that the defendant negligently failed to make that discovery. The plaintiff has not, however, cited any Maine cases in support of this proposition.

While Maine has not specifically addressed this theory of reformation, the Law Court has often informed its decisions on insurance matters by referring to the principles articulated in Couch. *See, e.g., Maine Mut. Fire Ins. Co. v. Watson*, 532 A.2d 686, 689 (Me. 1987); *Ouellette v. Maine Bonding & Casualty Co.*, 495 A.2d 1232, 1234 (Me. 1985); *American Home Assurance Co. v. Ingeneri*, 479 A.2d 897, 900 (Me. 1984). This treatise states that an insurance contract should not be reformed when there is a unilateral mistake concerning the description of the insured property. ``[W]here the policy clearly designates a certain subject of insurance, it cannot by changed to cover a different subject on proof that the agent of the insured, by mistake, described other property in his application than that intended to be insured." *Couch on Insurance 2d* (Rev. ed.) ' 66.86 at 375-76. In addition, ``[t]here [can] be no reformation where the insurer asked to cover all the insured's property but the insured failed to inform the insurer of additional property." *Id.* at 376. Such is the case here. Neither form of application suggests that coverage was sought for salvage operations. Furthermore, the record neither exposes any negligence on the part of the defendant nor reveals that it should have

known that the insured intended the Cumberland Salvage location on the Blackstrap Road to be included within the scope of the policy.[7]

On the basis of the foregoing, I conclude that the plaintiffs have failed to establish any genuine issues for trial and that the defendant is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Accordingly, I recommend that the defendant's motion for summary judgment be ***GRANTED***.

[7] The employment records submitted by the plaintiff in support of his motion indicate that Gray Meadows had six employees at the end of 1980, *see* Exh. D-2 to Deposition of Keith A. Libby, Sr., and that Cumberland Salvage employed eight, Exh. D-3 to Deposition of Keith A. Libby, Sr. The plaintiff argues that the defendant was put on notice that both sites were intended to be insured because it was charging Gray Meadows a premium based on eight employees. This argument, however, is unavailing. First, there is no evidence in the record that Gray Meadows employed only six people throughout the course of the entire year. Second, if the defendant audited both sites it would have recorded at least fourteen employees on the policy.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 27th day of April, 1990.

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David M. Cohen
United States Magistrate